

# PATENT COOPERATION TREATY

## PCT

### INTERNATIONAL SEARCH REPORT

(PCT Article 18 and Rules 43 and 44)

Applicant's or agent's file reference COCH0153PCT	<b>FOR FURTHER ACTION</b> <small>see Form PCT/ISA/720 as well as, where applicable, Item 5 below</small>	
International application No. PCT/US05/21207	International filing date (day/month/year) 15 June 2005 (15.06.2005)	(Earliest) Priority Date (day/month/year) 15 June 2004 (15.06.2004)
Applicant COCHLEAR AMERICAS		

This international search report has been prepared by this International Searching Authority and is transmitted to the applicant according to Article 18. A copy is being transmitted to the International Bureau.

This international search report consists of a total of 2 sheets.

☒ It is also accompanied by a copy of each prior art document cited in this report.

**1. Basis of the Report**

a. With regard to the language, the international search was carried out on the basis of:

☒  
☐

the international application in the language in which it was filed.

a translation of the international application into \_\_\_\_\_, which is the language of a translation furnished for the purposes of international search (Rules 12.3(a) and 23.1(b))

b. ☐

With regard to any nucleotide and/or amino acid sequence disclosed in the international application, see Box No. I.

2. ☐ Certain claims were found unsearchable (See Box No. II)

3. ☐ Unity of invention is lacking (See Box No. III)

4. With regard to the title,

☒  
☐

the text is approved as submitted by the applicant.

the text has been established by this Authority to read as follows:

5. With regard to the abstract,

☒  
☐

the text is approved as submitted by the applicant.

the text has been established, according to Rule 38.2(b), by this Authority as it appears in Box No. IV. The applicant may, within one month from the date of mailing of this international search report, submit comments to this Authority.

6. With regard to the drawings,

a. the figure of the drawings to be published with the abstract is Figure No. 3

☒  
☐  
☐

as suggested by the applicant.

as selected by this Authority, because the applicant failed to suggest a figure.

as selected by this Authority, because this figure better characterizes the invention.

b. ☐

none of the figures is to be published with the abstract.

## INTERNATIONAL SEARCH REPORT

International application No.

PCT/US05/21207

## A. CLASSIFICATION OF SUBJECT MATTER

IPC(7) : A61N 1/18

US CL : 607/57

According to International Patent Classification (IPC) or to both national classification and IPC.

## B. FIELDS SEARCHED

Minimum documentation searched (classification system followed by classification symbols)

U.S. : 607/55-57, 600/25

Documentation searched other than minimum documentation to the extent that such documents are included in the fields searched

Electronic data base consulted during the international search (name of data base and, where practicable, search terms used)

## C. DOCUMENTS CONSIDERED TO BE RELEVANT

Category *	Citation of document, with indication, where appropriate, of the relevant passages	Relevant to claim No.
X	US 5,788,651 A (NYGARD et al.) 02 June 1998 (02.06.1998), column, 2, lines 49-57)	8-10
Y		1-7 and 11-15
Y	US 6,205,360 B1 (CARTER et al.) 20 March 2003 (20.03.2003), column 6, lines 35-59.	1-7 and 11-15

☐ Further documents are listed in the continuation of Box C.☐ See patent family annex.

## \* Special categories of cited documents:

"A" documents defining the general state of the art which is not considered to be of particular relevance

"B" earlier application or patent published on or after the international filing date

"L" documents which may throw doubts on priority claim(s) or which is cited to establish the publication date of another citation or other special reason (as specified)

"O" document referring to an oral disclosure, use, exhibition or other means

"P" document published prior to the international filing date but later than the priority date claimed

"I"

later documents published after the international filing date or priority date and not in conflict with the application but cited to understate the principle or theory underlying the invention

"X"

document of particular relevance; the claimed invention cannot be considered novel or cannot be considered to involve an inventive step when the document is taken alone

"Y"

document of particular relevance; the claimed invention cannot be considered to involve an inventive step when the document is considered with one or more other such documents, such combination being obvious to a person skilled in the art

"Z"

document member of the same patent family

Date of the actual completion of the international search

12 December 2005 (12.12.2005)

Date of mailing of the international search report

08 FEB 2006

Name and mailing address of the ISA/US

Mail Stop PCT, Attn: ISA/US

Commissioner for Patents

P.O. Box 1450

Alexandria, Virginia 22313-1450

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Authorized officer

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# PATENT COOPERATION TREATY

From the  
INTERNATIONAL SEARCHING AUTHORITY

To:  
MICHAEL VERGA  
JAGTIANI + GUTTAG  
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FAIRFAX, VA 22030

## PCT

WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

Applicant's or agent's file reference <b>COCH0153PCT</b>		Date of mailing (day/month/year) <b>08 FEB 2006</b>
<b>FOR FURTHER ACTION</b> See paragraph 2 below		
International application No. <b>PCT/US05/21207</b>	International filing date (day/month/year) <b>15 June 2005 (15.06.2005)</b>	Priority date (day/month/year) <b>15 June 2004 (15.06.2004)</b>
International Patent Classification (IPC) or both national classification and IPC <b>IPC(7): A61N 1/18 and US CL: 607/57</b>		
Applicant <b>COCHLEAR AMERICAS</b>		

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☐ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability, citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

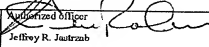
### 2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA/US Mail Stop PCT, Attn: ISA/US Commissioner for Patents P.O. Box 1450 Alexandria, Virginia 22313-1450 Facsimile No. (571) 273-3201	Date of completion of this opinion <b>12 December 2005 (12.12.2005)</b>	Authorized officer  <b>Jeffrey R. Jautz</b> Telephone No. (571) 272-2000
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Form PCT/ISA/237 (cover sheet) (April 2005)

WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY

International application No.

PCT/US05/21207

Box No. I Basis of this opinion

1. With regard to the language, this opinion has been established on the basis of:

- ☒ the international application in the language in which it was filed  
☐ a translation of the international application into \_\_\_\_\_ which is the language of a translation furnished for the purposes of international search (Rules 12.3(a) and 23.1(b)).

2. With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:

- a. type of material

- ☐ a sequence listing  
☐ table(s) related to the sequence listing

- b. format of material

- ☐ on paper  
☐ in electronic form

- c. time of filing/furnishing

- ☐ contained in the international application as filed.  
☐ filed together with the international application in electronic form.  
☐ furnished subsequently to this Authority for the purposes of search.

3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table(s) relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.

4. Additional comments:

WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY

International application No.  
PCT/US05/21207

**Box No. V Reasoned statement under Rule 43 bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

1. Statement

Novelty (N)	Claims <u>1-7 and 11-15</u>	YES
	Claims <u>8-10</u>	NO
Inventive step (IS)	Claims <u>NONE</u>	YES
	Claims <u>1-15</u>	NO
Industrial applicability (IA)	Claims <u>1-15</u>	YES
	Claims <u>NONE</u>	NO

2. Citations and explanations:

Claims 8-10 lack novelty under PCT Article 33(2) as being anticipated by Nygard et al. The detection of maximum gradient of the EAP and minimum artifact amounts to detection of plural features.

Claims 1-7 and 11-15 lack an inventive step under PCT Article 33(3) as being obvious over Carter et al. in view of Nygard et al. Carter discloses the invention substantially as claimed including incremental stimulation to determine the NRT threshold, however plural features are not detected in the response signal. Nygard et al. teach that the sensed EAP includes a stimulus artifact and thus seeks to find the maximum EAP along with the minimum artifact (plural features). It would have been obvious to have incorporated the Nygard et al. teachings into the Carter device in order to optimize signal detection by removing noise generated by the stimulation signal.

Claims 1-15 meet the criteria set out in PCT Article 33(4), and thus have industrial applicability because the subject matter claimed can be made or used in industry.

## NOTES TO FORM PCT/ISA/220

These Notes are intended to give the basic instructions concerning the filing of amendments under Article 19. The Notes are based on the requirements of the Patent Cooperation Treaty, the Regulations and the Administrative Instructions under that Treaty. In case of discrepancy between these Notes and those requirements, the latter are applicable. For more detailed information, see also the *PCT Applicant's Guide*, a publication of WIPO.

In these Notes, "Article," "Rule" and "Section" refer to the provisions of the PCT, the PCT Regulations and the PCT Administrative Instructions, respectively.

### INSTRUCTIONS CONCERNING AMENDMENTS UNDER ARTICLE 19

The applicant has, after having received the international search report, one opportunity to amend the claims of the international application. It should however be emphasized that, since all parts of the international application (claims, description and drawings) may be amended during the international preliminary examination procedure, there is usually no need to file amendments of the claims under Article 19 except where, e.g. the applicant wants the latter to be published for the purposes of provisional protection or has another reason for amending the claims before international publication. Furthermore, it should be emphasized that provisional protection is available in some States only.

#### What parts of the international application may be amended?

Under Article 19, only the claims may be amended.

During the international phase, the claims may also be amended (or further amended) under Article 34 before the International Preliminary Examining Authority. The description and drawings may only be amended under Article 34 before the International Preliminary Examining Authority.

Upon entry into the national phase, all parts of the international application may be amended under Article 28 or, where applicable, Article 41.

**When?** Within 2 months from the date of transmittal of the international search report or 16 months from the priority date, whichever time limit expires later. It should be noted, however, that the amendments will be considered as having been received on time if they are received by the International Bureau after the expiration of the applicable time limit but before the completion of the technical preparations for international publication (Rule 46.1).

#### Where not to file the amendments?

The amendments may only be filed with the International Bureau and not with the receiving Office or the International Searching Authority (Rule 46.2).

Where a demand for international preliminary examination has been filed, see below.

**How?** Either by cancelling one or more entire claims or by joining one or more new claims or by amending the text of one or more of the claims as filed.

A replacement sheet must be submitted for each sheet of the claims which, on account of an amendment or amendments, differs from the sheet originally filed.

All the claims appearing on a replacement sheet must be numbered in Arabic numerals. Where a claim is cancelled, no renumbering of the other claims is required. In all cases where claims are renumbered, they must be renumbered consecutively (Administrative Instructions, Section 205(b)).

The amendments must be made in the language in which the international application is to be published.

#### What documents must/may accompany the amendments?

Letter (Section 205(b)):

The amendments must be submitted with a letter.

The letter will not be published with the international application and the amended claims. It should not be confused with the "Statement under Article 19(1)" (see below, under "Statement under Article 19(1)").

The letter must be in English or French, at the choice of the applicant. However, if the language of the international application is English, the letter must be in English; if the language of the international application is French, the letter must be in French.